

§143.0141 Development Regulations for Sensitive Biological Resources

Development that proposes *encroachment* into *sensitive biological resources* or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

(a) General Regulations for Sensitive Biological Resources

(1) ~~(i)~~ All *development* occurring in *sensitive biological resources* is subject to a site-specific impact analysis conducted by a qualified Biologist ~~the City Manager~~, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to *sensitive biological resources* and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact.

(A) Dedication in fee title to the City of San Diego; or

(B) Dedication of a covenant of easement or conservation easement in favor of the City of San Diego and the Wildlife Agencies either:

~~(1)(i) Acquisition or dedication of another site that can serve to mitigate project impacts, For an off-site location with long-term viability and biological values equal to or greater than the impacted site, and with limited right of entry for habitat management, as necessary, if the site is not dedicated. This site must have long-term viability and the biological values must be equal to or greater than the impacted site; or~~

~~(2) (ii) Preservation or dedication of For on-site *sensitive biological resources*, creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary, if the site is not dedicated. The site must have long-term viability and the biological values must be equal to or greater than the impacted area.~~

~~(3)(C)~~ In circumstances where the area of impact is small, monetary payment of compensation into a fund may be accepted in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds and acquire or maintain habitat preservation areas.

(2) ~~(f)~~ *Grading* during wildlife breeding seasons shall be consistent with the requirements of the City of San Diego *MSCP Subarea Plan*.

(3) ~~(4)~~ *Sensitive biological resources* that are outside of the allowable development area on a *premises*, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement or conservation easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 143.0152. The U.S. Fish and Wildlife Service and the California Department of Fish and Game are to be named as third party beneficiaries to any covenant of easement or conservation easement recorded pursuant to this section.

(4) ~~(e)~~ Inside and adjacent to the *MHPA*, all *development* proposals shall be consistent with the City of San Diego *MSCP Subarea Plan*.

(5) Projects located Inside the MHPA

~~(d) (A) Inside the MHPA, d~~Development is permitted only if necessary to achieve the allowable development area in accordance with the regulations set forth in the OR-1-2 zone, pursuant to Section 131.0250(b), unless exempted from the development area regulations pursuant to Section 143.0111.

~~(f) (B) Inside the MHPA, a~~Any change of an agricultural use to a non-agricultural use is subject to the development area regulations of Section 143.0141 ~~(d) (a)(5)(A)~~. Existing agricultural operations that exceed the allowable development area may remain as agricultural use only and do not count as part of the allowable development area.

(6) Projects Located Outside of the MHPA

~~(g) (A) Outside the MHPA, d~~Development of lands that are designated as open space in the applicable *land use plan* and zoned OR-1-1 is permitted only if necessary to achieve the allowable development area, in accordance with Section 131.0250 (a).

~~(h) (B) Outside the MHPA, e~~Encroachment into *sensitive biological resources* is not limited, except as set forth in Section 143.0141 (a)(6)(A) and (b) and (g).

(7) Narrow Endemic Species

Inside the *MHPA*, *development* shall avoid impacts to narrow endemic species. Outside the *MHPA*, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation.

A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

(b) Wetland Regulations

- ~~(a)~~ (1) State and federal law ~~precludes~~ regulates adverse impacts to *wetlands* ~~or~~ and listed ~~non-covered~~ species habitat. The *applicant* shall confer, when as applicable, with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the *development* proposal.
- (2) The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat.
- (3) The applicant shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing.
- (4) *Grading or construction permits* shall not be issued for any project that impacts *wetlands* or listed ~~non-covered~~ species habitat until all necessary federal and state permits have been obtained.
- ~~(b)~~ (5) ~~Outside and inside the MHPA, i~~Impacts to *wetlands*, including vernal pools in naturally occurring complexes, shall be avoided. A *wetland buffer* shall be maintained around all *wetlands* as appropriate to protect the functions and values of the *wetland*. In the Coastal Overlay Zone the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). ~~Mitigation for impacts associated with a deviation shall achieve the goal of no net loss and retain in-kind functions and values.~~

§143.0150 Deviations from Environmentally Sensitive Lands Regulations

Plans submitted in accordance with this section shall, to the maximum extent feasible, comply with the regulations of this division. If a proposed *development* does not comply with all applicable development regulations of this division and a deviation is requested as indicated in Table 143-01A, the Planning Commission may approve, conditionally approve, or deny the proposed Site Development Permit in accordance with Process Four, subject to the following:

- (a) (No Change)
- (b) (No Change)
- (c) (No Change)

- (d) Deviations to the wetland regulations of this division for *development* located outside of the Coastal Overlay Zone may be granted only if the *development* qualifies to be processed as one of the three options set forth in the following regulations and in accordance with the Biology Guidelines in the Land Development Manual:

(1) Essential Public Projects Option

- (A) A deviation may only be requested for an Essential Public Project where no feasible alternative exists that would avoid impacts to wetlands.
- (B) For the purpose of this section, Essential Public Projects shall include:
- (i) Any public project identified in an adopted *land use plan* or implementing document and identified on the Essential Public Projects List adopted by Resolution No.[insert No.] as Appendix III to the Biology Guidelines; or
 - (ii) Linear infrastructure, including but not limited to major roads and *land use plan* circulation element roads and facilities including bike lanes, water and sewer pipelines including appurtenances, and stormwater conveyance systems including appurtenances; or
 - (iii) Maintenance of existing public infrastructure; or
 - (iv) State and federally mandated projects.

(2) Economic Viability Option

A deviation may be requested to preserve economically viable use of a property that would otherwise be deprived by a strict application of the regulations. Such a deviation shall be the minimum necessary to achieve economically viable use of the property and shall avoid wetland resources to the maximum extent practicable.

(3) Biologically Superior Option

- (A) A deviation may be requested to achieve a superior biological result which would provide a net increase in quality and viability (functions and value), relative to

existing conditions or the project originally proposed by the applicant, and long term biological benefit.

(B) Wetland resources that would be impacted by the project shall be demonstrated to be of low biological quality.

§143.0110 When Environmentally Sensitive Lands Regulations Apply

Table 143-01A
Applicability of Environmentally Sensitive Lands Regulations

<i>Environmentally Sensitive Lands Potentially Impacted by Project</i>						
Type of Development Proposal		Wetlands, listed non-covered species habitat⁽¹⁾	Other Sensitive Biological Resources other than Wetlands and listed noncovered species habitat	Steep Hillsides	Sensitive Coastal Bluffs and Coastal Beaches	Floodplains
1. <i>Single dwelling units on individual lots equal to or less than 15,000 square feet</i> ⁽²⁾	R	143.0141(a),(b)	143.0141	143.0142 except (a) ⁽⁵⁾	143.0143, 143.0144	143.0145 143.0146
	P	NDP/ Process Two	NDP/ Process Two	NDP/ Process Two	SDP/ Process Three	NDP/ Process Two
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
2. <i>Single dwelling units on lots or multiple lots totaling more than 15,000 square feet</i>	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145
	P	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
3. <i>Multiple dwelling unit and non-residential development and public works projects</i>	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145 143.0146
	P	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three	SDP/ Process Three
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
4. <i>Any subdivision of a premises</i>	R	143.0141(a),(b)	143.0141	143.0142 ⁽³⁾	143.0143, 143.0144	143.0145 143.0146
	P	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
5. <i>Project-specific land use plans</i>	R	143.0141(a),(b), 143.0115	143.0141, 143.0115	143.0142, 143.0115	143.0143, 143.0144, 143.0115	143.0115, 143.0145 143.0146
	P	SDP/Process Four/Five	SDP/ Process Four/Five	SDP/Process Four/Five	SDP/ Process Four/Five	SDP/Process Four/Five
	U	143.0130(d),(e)	--	--	143.0130(a), (b)	143.0130(c)
6. <i>Any development that proposes deviations from any portion of the Environmentally Sensitive Lands Regulations</i>	R	143.0141(a),(b), 143.0150	143.0141, 143.0150	143.0142, 143.0150 ⁽⁴⁾	143.0143, 143.0144, 143.0150	143.0145, 143.0146 143.0150
	P	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four	SDP/ Process Four
	U	143.0130(d),(e)-	--	--	143.0130(a), (b)	143.0130(c)
7. <i>Development other than single dwelling units on individual</i>	R	--	--	143.0142 except (a), 143.0151	--	--

<i>lots, that proposes alternative compliance for development area in steep hillsides.</i>	P	--	--	SDP/ Process Four	--	--
	U	--	--	--	--	--

Legend to Table 143-01A	
R	Development regulation sections (in addition to Section 143.0140) applicable to the <i>environmentally sensitive lands</i> present.
P	Type of Permit/Decision process required. Neighborhood Development Permit (NDP) Site Development Permit (SDP)
U	Regulations that identify permitted uses when they are different than the applicable zone due to the <i>environmentally sensitive lands</i> present.

Footnotes to Table 143-01A

¹ ~~This includes listed species and their habitat not covered by the Take Authorizations issued to the City by the State and Federal governments under the Multiple Species Conservation Program.~~ State and federal laws and regulations regulate adverse impacts to wetlands and listed species habitat. The City does not have incidental take authorization for listed species within jurisdictional waters.

Footnotes 2-5 [No change]